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February 18, 2015

CENTRAL DISTRICT OF CALIFORNIA
BY: TS DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

LESLIE G. PARKER,

Petitioner,

v.

AMY MILLER, Warden,

Respondent.

No. ED CV 15-00253-DOC (DFM)

ORDER TO SHOW CAUSE

On February 10, 2015, Petitioner Leslie Parker constructively filed a
Petition for Writ of Habeas Corpus by a Person in State Custody in this Court,
raising two grounds for relief. Dkt. 1 ("Petition"). From the face of the
Petition, it appears that a Riverside County Superior Court jury convicted
Petitioner on March 4, 2010 of one count of first degree felony murder. Id. at
2.¹ Petitioner was sentenced to life without parole. Id.

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¹ All citations to the Petition are to the CM/ECF pagination.

1 **A. The Petition Is Facially Untimely**

2 In 1996, Congress enacted the Antiterrorism and Effective Death
3 Penalty Act (“AEDPA”), a portion of which established a one-year statute of
4 limitations for bringing a habeas corpus petition in federal court. 28 U.S.C. §
5 2244(d). In most cases, the limitations period commences on the date a
6 petitioner’s conviction became final. See 28 U.S.C. § 2244(d)(1). Here,
7 although the Petition does not disclose the date, it appears from the California
8 Appellate Courts’ Case Information website² that the California Supreme
9 Court denied Petitioner’s petition for review on July 31, 2013. Petitioner does
10 not appear to have filed a petition for writ of certiorari in the Supreme Court.
11 Therefore, his conviction became final 90 days later, on October 29, 2013. See
12 Bowen v. Roe, 188 F.3d 1157, 1158-59 (9th Cir. 1999). Petitioner then had one
13 year from the date his judgment became final on October 29, 2013, or until
14 October 29, 2014, to timely file a habeas corpus petition in this Court. See
15 Patterson v. Stewart, 251 F.3d 1243, 1247 (9th Cir. 2001). However, Petitioner
16 did not file the instant action until February 10, 2015, more than three months
17 too late.

18 From the face of the Petition, it does not appear that Petitioner has any
19 basis for contending that he is entitled to a later trigger date under §
20 2244(d)(1)(B). Nor does it appear that Petitioner has any basis for contending
21 that he is entitled to a later trigger date under § 2244(d)(1)(C) because none of
22 the claims alleged in the Petition appear to be based on a federal constitutional
23 right that was initially recognized by the United States Supreme Court
24 subsequent to the date his conviction became final and that has been made
25 retroactively applicable to cases on collateral review. Finally, it does not
26

27 ² <http://appellatecases.courtinfo.ca.gov/>
28

1 appear that Petitioner has any basis for contending that he is entitled to a later
 2 trigger date under § 2244(d)(1)(D) because it appears from the face of the
 3 Petition that Petitioner was aware of the factual predicate of all his claims at
 4 the time of his trial in 2010. See Hasan v. Galaza, 254 F.3d 1150, 1154 n.3 (9th
 5 Cir. 2001) (statute of limitations begins to run when a prisoner “knows (or
 6 through diligence could discover) the important facts, not when the prisoner
 7 recognizes their legal significance”).

8 **B. It Does Not Appear that Petitioner Is Entitled to Any Statutory or**
 9 **Equitable Tolling Which Would Make the Petition Timely**

10 Thus, unless a basis for tolling the statute existed, Petitioner’s last day to
 11 file his federal habeas petition was October 29, 2014. See Patterson, 251 F.3d
 12 at 1246. No basis for statutory tolling under § 2244(d)(2) appears to exist here
 13 because Petitioner did not file any state collateral challenges to his judgment of
 14 conviction. See Petition at 3.

15 The Supreme Court has held that AEDPA’s one-year limitation period is
 16 also subject to equitable tolling in appropriate cases. See Holland v. Florida,
 17 560 U.S. 605, 645 (2010). However, a habeas petitioner is entitled to equitable
 18 tolling only if he shows (1) that he has been pursuing his rights diligently; and
 19 (2) that “some extraordinary circumstance stood in his way.” See Pace v.
 20 DiGuglielmo, 544 U.S. 408, 418 (2005); see also Holland, 560 U.S. at 649.
 21 Here, Petitioner does not allege that any circumstances exist which would
 22 establish a right to equitable tolling.

23 **C. Additionally, Ground Two Fails to State a Cognizable Federal**
 24 **Habeas Claim**

25 In Ground Two, Petitioner alleges that the trial court abused its
 26 discretion by admitting a prior conviction for robbery under California
 27 Evidence Code § 1101(b) for the purpose of proving intent to rob because
 28 intent to rob was not a contested issue at trial. Petition at 3. A federal court can

1 grant habeas corpus relief to a petitioner “only on the ground that he or she is
2 in custody in violation of the Constitution or laws or treaties of the United
3 States.” 28 U.S.C. § 2254(a); Estelle v. McGuire, 502 U.S. 62, 67-68 (1991)
4 (emphasizing that “it is not the province of a federal habeas court to reexamine
5 state-court determinations on state-law questions”). Ground Two does not
6 present a federal question because it appears to concern a claim of evidentiary
7 error only under California evidence law.

8 **D. Conclusion**

9 A district court has the authority to raise the statute of limitations issue
10 sua sponte when untimeliness is obvious on the face of the petition and to
11 summarily dismiss a petition on that ground pursuant to Rule 4 of the Rules
12 Governing Section 2254 Cases in the United States District Courts, so long as
13 the court “provides the petitioner with adequate notice and an opportunity to
14 respond.” See Nardi v. Stewart, 354 F.3d 1134, 1141 (9th Cir. 2004); Herbst v.
15 Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001).

16 IT THEREFORE IS ORDERED that, on or before March 20, 2015,
17 Petitioner show cause in writing as to why the Court should not recommend
18 that this action be summarily dismissed with prejudice on the ground of
19 untimeliness.

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21 Dated: February 18, 2015



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23 DOUGLAS F. McCORMICK
24 United States Magistrate Judge
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